(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 27 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S. N. Joshi, advocate for the petitioner.

Mr. S. G. Dessai, Senior Advocate with Mr. N. Purushan, advocate for the respondents.

CORAM : B. H. MARLAPALLE, J.

DATE : 16th September, 2004

P.C.:

Heard Mr. Joshi, learned advocate for the petitioner. This petition filed under Articles 226 and 227 of the Constitution of India prays to quash and set aside the Orders dated 31.3.2001, 15.6.2001 and the Proclamation dated 16.6.2001. It further prays to dismiss the Execution Application No.1/2000 filed before the learned IInd Additional District Judge at Panaji.

2. There is no dispute that an Arbitrator came to be appointed

on or about 27th March, 1997, i.e. subsequent to the enactment and enforcement of the Arbitration and Conciliation Act, 1996 and the Arbitrator passed the Award on or about 28th March, 1999. Execution Application no.1/2000 came to be filed by the decree-holders and the present petitioner was impleaded as respondent/judgment-debtor. He filed an application at Exh.7 objecting to the maintainability of the execution application and the said application at Exh.7 came to be rejected by the learned IInd Additional District Judge at Panaji by her Order dated 31st March, 2001. It appears that the said Order was initially challenged by filing a Civil Revision Application which was registered as Civil Revision Application No.136/2001. This Civil Revision Application No.136/2001 came to be rejected by this Court on 17.7.2003 by the following reasoning:-

> "From the impugned order, it is seen that an objection was raised by the Judgment-debtor that the decree could not be executed as the proceedings had to be initiated under the Act of 1940. The learned Judge recorded the finding that the appointment of the arbitrator itself was under the Act of 1996. The Award came to be passed under the Act of 1996. Considering that there is no error apparent or error of jurisdiction in the order passed by the learned executing Court, there is no merit in this revision application."

3. In short, in this petition, the petitioner is seeking to review this Order dated 17th July, 2003, passed by this Court, which is not permissible and the petition is certainly misconceived.

4. In addition, it is clear from the affidavit in reply filed by present respondents, that the petitioner has filed an objection petition under Section 34 of the Arbitration and Conciliation Act, 1996, and on notice the respondents filed their reply on 14th September, 2001, in the said objection

application. The affidavit further states that the petitioner has filed an application seeking withdrawal of the objection proceedings on or about 17th January, 2004. Once the challenge to the order impugned in this petition was considered by this Court in C.R.A.No.136/2001, and the same was turned down, this petition under Article 227 of the Constitution of India cannot be entertained.

5. Petition is rejected summarily.

B. H. MARLAPALLE, J.

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